

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING QUARTERLY INTERIM
FEE APPLICATION OF ORRICK, HERRINGTON & SUTCLIFFE LLP FOR
FOR THE PERIOD OF OCTOBER 1, 2011, THROUGH DECEMBER 31, 2011**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Quarterly Interim Fee Application of Orrick, Herrington & Sutcliffe LLP for the Period of October 1, 2011, through December 31, 2011 (the "Application").

BACKGROUND

1. Orrick, Herrington & Sutcliffe LLP ("Orrick") was retained as bankruptcy counsel to David T. Austern, Future Claimants' Representative. In the Application, Orrick seeks approval of fees totaling \$202,189.50 and expenses totaling \$2,772.72 for its services from October 1, 2011, through December 31, 2011 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2012, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C.

§330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Orrick based upon our review, and we received a response from Orrick, portions of which response are quoted herein.

DISCUSSION

General Issues

3. We noted that the expense detail was missing from Orrick's Application. Orrick supplied its expense detail in response to our request. See Response Exhibit 1. Our questions concerning Orrick's expenses are addressed in paragraphs 5, 6, and 7.

Specific Time and Expense Entries

4. We noted several time entries pertaining to the receipt of payments from W. R. Grace. See Exhibit A. It appears to us that the tracking and processing of payments is a bookkeeping function and, therefore, the cost of doing business. We asked Orrick to explain why the bankruptcy estate should be charged for this work. Orrick responded as follows:

In paragraph 4 of the Report, the Fee Auditor questioned certain time entries for managing payments from W. R. Grace. As the end of 2011 approached, we reconciled our records to Grace's records to identify any inconsistencies, and attempted to determine payments that would be made by year end. We believe that this task is not entirely a bookkeeping matter, given the intricacies of the billing and fee application process. Moreover, we believe it is appropriate for lawyers who sign fee applications to review the status of billing matters from time to time. Thus, while we disagree with the fee auditor's objection and reserve our rights, we are prepared to reduce our fee request by \$503.50, representing Ms. Fullem's time billed to the tasks that were questioned, and would continue to request reimbursement for the time spent reviewing these matters by Mr. Frankel (.40 hours at \$394) and me (.20 hours at \$170).

We appreciate Orrick's proffered reduction of \$503.50 for Ms. Fullem's time entries. And we

concur that time spent pertaining to fee application preparation should be compensated. However, the time entries listed on Exhibit A for Messrs. Frankel and Wyron give no indication that they pertain to the fee application process. Accordingly, we recommend disallowance of all of the time entries listed on Exhibit A, for a reduction of \$1,067.50 in fees.

5. We noted the following meal charges for which more information was needed:

8/5/2011	TRVML	\$64.98	VENDOR: Frankel, Roger; Invoice #: 101011; Date: 10/18/2011 - dc/dd/#141473/myp-mediate w/ McGovern, Aldock, Wyron, Donley, Austern, Inselbuch, Ny 8/5-7/11
11/9/2011	BUSML	\$103.00	VENDOR: Frankel, Roger; Invoice #: 111411A; Date: 11/18/2011 - dc/dd/#143037/myp - meal 11/9/11

In response to our request, Orrick provided the following information:

The fee auditor has requested additional information for the following meal expenses:

- a. 08/5/11 – Breakfast Meeting – 3 people in New York, NY - \$64.98
- b. 11/9/11 – Lunch Meeting – 2 people in Washington, DC - \$103.00

The fee auditor's latest guidelines for breakfast allowance in New York is \$35 per person and lunch allowance in Washington, DC is \$45 per person. No reduction is necessary to the breakfast meal of August 5, 2011; Orrick agrees to a reduction of \$13.00 to the lunch meal of November 9, 2011.

We appreciate Orrick's response and recommend a reduction of \$13.00 in expenses.

6. We noted the following travel expense for which more information was needed:

6/28/2011	LTRV	\$801.00	VENDOR: Frankel, Roger; Invoice#: 100511; Date: 10/14/2011 - dc/dd/#141179/myp- attd oral argument in USDC before Judge Buckwalter Phila 6/128-29/11
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In response to our request, Orrick provided the following information:

6/28/11 and 6/29/11 – \$801.00 – Roger Frankel round-trip business class¹ train travel from Washington, DC to Philadelphia, PA to attend oral argument at the Third Circuit on two separate travel days (\$392 for travel on 6/28; and \$409 for travel on 6/29)...

We accept Orrick's response and have no objection to this expense.

7. We noted the following air fare charges for which more information was needed:

8/5/2011	AIR	\$383.00	VENDOR: Frankel, Roger; Invoice #: 101011; Date: 10/18/2011 - dc/dd/#141473/myp-mediate w/ McGovern, Aldock, Wyron, Donley, Austern, Inselbuch, Ny 8/5-7/11
8/8/2011	AIR	\$383.00	VENDOR: Frankel, Roger; Invoice #: 103111; Date: 11/7/2011 - dc/dd/#142331/myp-mediation session, confer w/ Austern, Donley, Paul prior to mtg, Ny 8/8/11
11/1/2011	AIR	\$493.70	VENDOR: American Express; Invoice#: 102511; Date: 10/25/2011 - Firm-Firm/S#142539/MYP - Lawyers Travel Charge Acct 3XXX-X708-11008
11/1/2011	AIR	\$86.20	VENDOR: Wyron, Richard H; Invoice#: 110311; Date: 11/28/2011 - dc/dd/#143449/myp - Ny for FCR mtg 11/1-2/11
11/7/2011	AIR	(\$419.70)	VENDOR: American Express; Invoice#: 112511; Date: 11/20/2011 - Firm - Firm/S#143769MYP - Lawyers Travel Charge Account 3XXX - X708-11008

In response to our request, Orrick provided the following information:

- a. 8/5/2011 – \$383.00 – Roger Frankel air fare from Washington, DC to New York, NY;
- b. 8/8/2011 - \$383.00 – Roger Frankel air fare from New York, NY to Washington, DC;
- c. 11/1/2011 - \$493.70 – Richard Wyron air fare from Washington, DC to New York, NY (this trip was cancelled; see item f. below);

¹As you may know, Amtrak has two classes of service on its Acela trains in the Northeast Corridor – “Business” and “First Class.” The references in this item to business class are to the lower class of service on Amtrak Acela trains.

d. 11/1/2011 - \$86.20 – Richard Wyron round-trip business class train travel from Washington, DC to New York, NY in the total amount of \$431.00, allocated equally among five clients;

e. 11/7/2011 – (\$419.70) – Richard Wyron credit for cancelled air fare. This credit was for the charge in item d. above, and should have been in the full amount of \$493.70. Accordingly, Orrick agrees to provide a full credit, and reduces its requested reimbursement by \$74.00.

We appreciate Orrick's response and, accordingly, recommend a reduction of \$74.00 in expenses.

8. Thus, we recommend approval of \$201,122.00 in fees (\$202,189.50 minus \$1,067.50) and \$2,685.72 in expenses (\$2,772.72 minus \$87.00) for Orrick's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

Warren H. Smith


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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 7th day of May, 2012.



Warren H. Smith

SERVICE LIST

Notice Parties

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EXHIBIT A

10/14/11	D. Fullem	Review recent payment information; update R. Wyron; update spreadsheets and circulate.	0.50	132.50
10/17/11	D. Fullem	E-mails to and from R. Wyron regarding status of payments in Grace due and upcoming.	0.30	79.50
10/17/11	R. Wyron	Review recent payment issues.	0.20	170.00
10/20/11	D. Fullem	E-mail to accounting regarding status of recent payments.	0.20	53.00
11/10/11	D. Fullem	Review e-mail from R. Wyron regarding receipt payment.	0.20	53.00
11/11/11	D. Fullem	Review and respond to e-mail from V. Crossley in accounting regarding October invoice status.	0.20	53.00
12/06/11	R. Frankel	Review, exchange series of e-mails re payments from Grace (.3); review with R. Wyron (.1).	0.40	394.00
12/07/11	D. Fullem	Review e-mail from R. Wyron re status of payments.	0.20	53.00
12/19/11	D. Fullem	Review recent payment information from accounting; update fee/expense charts and circulate to group.	0.30	79.50
			2.50	1,067.50